Faculteit Rechtsgeleerdheid – K.U. Leuven

LEERGANG PENSIOENRECHT

NIEUWSBRIEF

Nr. 6

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Nieuwsbrief nr. 6 bevat enkel internationaal nieuws. Voor nationaal nieuws met betrekking tot dezelfde periode, zie nieuwsbrief nr. 5.

INHOUDSTAFEL

1. BELGISCH - JAPANSE SOCIALE ZEKERHEIDSNOVEREENKOMST

Na jaren bilateraal overleg hebben Japan en België een overeenkomst over de sociale zekerheid gesloten. De overeenkomst werd bekendgemaakt in het Belgisch Staatsblad van 3 november 2006 en treedt op 1 januari in werking.

Ze heeft betrekking op de rust- en overlevingspensioenen en op de invaliditeitsuitkeringen voor werknemers en zelfstandigen. Ze geldt voor alle personen die in een van beide landen verzekeringsplichtig zijn of zijn geweest.

Dankzij deze overeenkomst zal ook een dubbele onderwerping van gedetacheerde werknemers kunnen worden voorkomen.

2. CEIOPS

2.1. Ceiops geeft documenten vrij

CEIOPS heeft een aantal interessante documenten beschikbaar gesteld op de website. Hier lezen we:

CEIOPS prepares a Financial Stability Report on the European insurance, reinsurance and occupational pension fund sector on a semi-annual basis. The autumn report is primarily based on supervisory information, whereas the spring report is primarily based on market information. The current version is the public version of the autumn report. Although some detailed information has been left out from this public version, the overall assessment on the European insurance and pension fund sector has not changed.

Verder relevant voor pensioenen:
- Recent pension reform efforts in Europe are geared towards the economic implications of an ageing population that is accompanied by a high level of future pension liabilities. As a result, growth of the occupational pension fund sector is expected to accelerate further over the coming decades as a means of diversifying some of the longevity risk related to traditional social security systems.

- The financial position of the occupational pension fund sector has improved in most member states, due to positive developments in equity markets as well as growth in contributions. In a number of member states defined benefit (DB) plans are gradually phasing out and being replaced by new defined contribution (DC) plans. This gradual trend will help reduce the vulnerability of the pension fund sector to funding risk traditionally related to DB plans and will also imply a greater transfer of investment risk from the pension fund sector to the household sector.

Bron: http://www.ceiops.org/

2.2. Ceiops houdt een hoorzitting

CEIOPS has hold a public hearing on 10 January 2007, in addition to the procedure for written public consultation that was open till 12 January 2007. The aim of this public hearing was to give all stakeholders the opportunity of direct dialogue with CEIOPS' representatives in commenting on Consultation Papers Nos. 15 to 20, as well as other outstanding issues of the Solvency II project, especially in the light of the short written consultation period which is set for these Consultation Papers.

In the context of the development of the Solvency II project, CEIOPS is committed to provide the European Commission with a series of technical advices in response to its requests covering all the aspects of the future prudential supervision for insurance undertakings, including group and cross-sectoral issues. These requests are in line with the rule-making process which the European Parliament and the Council adopted under the proposed extension of the "Lamfalussy process".

Bron: www.ceiops.org/content/view/15/19/

3. Duitsland: discussie over de fiscale korting op de Riester pensioenen

The government has sent a strong signal that it will axe a social tax exemption for defined contribution schemes, which the German pensions industry feels is crucial to further spread of the second-pillar in the country. The social tax exemption in question was created by the Riester reforms of 2001. It is to expire at the end of 2008 unless the government decides to prolong it. The government had previously said it would officially decide the fate of the exemption next spring.

In a new report the ministry for labour and social affairs said flatly: "Corporate pensions will continue to be attractive even without the social tax exemption. It is therefore right that the exemption expire at the end of 2008." To justify the move, the ministry said that if the exemption were retained, the government would continue to face a tax shortfall of more than €2bn annually. This, in turn, might prompt further hikes in contributions to health and pension insurance, the ministry said in the report.

German occupational pensions association aba has long argued that, since it took effect in January 2002, the exemption has helped to ensure a high rate of penetration for corporate pensions. Currently, around 60% of Germany's 30m employees have some type of corporate pension coverage. Moreover, aba feels that if the exemption is axed, the second pillar will not reach those employees which most need them.

Author: Jan Wagner
Bron: www.IPE.com - 2 January 2007

4. NEDERLAND: NIEUWE PENSIOENWET

De Tweede Kamer heeft de Pensioenwet op 26 september 2006 aangenomen. Op 5 december 2006 heeft de Eerste Kamer met de wet ingestemd. De nieuwe wet vervangt de Pensioen- en spaarfondsenwet en is per 1 januari 2007 van kracht.

Een duidelijk overzicht van de wijzigingen kan u lezen op volgende website: link naar de wijzigingen

5. VERENIGD KONINKRIJK

5.1. Controledienst: Solvency II voor de pensioensector is onduidelijk

It's still unclear whether the European Union's occupational pension fund directive will be amended to account for the Solvency II project for insurance companies, according the UK's Financial Services Authority.

The watchdog acknowledged it has been agreed that occupational pensions should remain outside the scope of the review of the capital adequacy regime for the European insurance industry.

But it said: "There remains the question for the future of whether the pensions directive [Institutions for Occupational Retirement Provision] will subsequently be amended to replace references in that directive to the current Solvency 1 directives with updated references to Solvency II, thereby requiring occupational pensions to comply with some or all of the requirements in the new framework."

It added: "The Commission's position on this is currently unclear, though a number of other European regulators that have both insurance and pensions in their remit are pushing for this change to be made."

The comments come in the FSA's latest annual International Regulatory Outlook.

Author: Daniel Brooksbank
Bron: www.IPE.com - 13 December 2006

5.2. Opmerkelijk pleidooi voor een basispensioen vanwege ministerie

On October 30, 2006, the Department for Work and Pensions recommended simplifying the State Second Pension (S2P) by changing it from an earnings-related benefit to a flat-rate benefit based on years of employment and a credit for caring for underage children or disabled family members. Under the proposal, the initial flat-rate benefit would be indexed to wages, and benefit increases would be indexed to prices.

Source: Department of Work and Pensions, press release, October 30, 2006.

5.3. Tweede Pijler verdrongen door Eerste Pijler ?

The government on Tuesday 12 December detailed its proposals to avert a pension timebomb by setting up a national saving system that will cover up to 10 million citizens.

A key reform element of the most radical shakeup to pensions in 60 years, a low-cost National Pensions Saving Scheme (NPSS) will be set up by 2012, taking compulsory contributions from companies and staff and routing money to investment funds.

The rising costs of an ageing population have prompted many firms to close pensions. Britain has an estimated 57-billion-pound saving gap and pensions have shot up the political agenda in Britain and in other nations.

"These reforms are designed to fill a gap in the existing market -- we want them to complement the existing market, not compete with it," John Hutton, Secretary of State for Work and Pensions (DWP), said.

Many commentators fear that a new system of what are called "Personal Accounts" could undermine existing pensions and encourage employers to "level down" current relatively generous contributions to the minimum levels set by the NPSS.

"Personal accounts are being sold as the "big idea" to radically transform pension saving in the UK and we want them to succeed. But if Pension Accounts are to be effective the concerns of business will need to be addressed," Graeme Leach, chief economist, Institute of Directors, said. The new system will add to company costs and could cut future pay rises, Martin Temple, director general of manufacturing organisation EEF, said in a statement.

Bron: © Reuters 2006 - Tom Burroughes and Christina Fincher – Wed Dec 13, 2006

5.4. Zijn individuele rekeningen wel een goede optie voor iedereen ?

In het verlengde van het bericht van de Britse regering, wijs ik graag op een en nieuw rapport van het Pension Policy Institute in het Verenigd Koninkrijk. Het rapport onderzoekt de mate waarin "Individuele Pensioenspaarrekeningen" een goede optie vormen in het pensioenbeleid. In het VK woedt immers al enige tijd een hevige strijd over het al dan niet verplicht stellen van een spaarformule voor de burgers. De Britten blijken immers relatief slechte spaarders te zijn (zeker in vergelijking met de Belgen).

The report considers the interaction between the proposed system of Personal Accounts, state pensions, the tax system and means-tested benefits in detail in order to identify groups for whom Personal Accounts are likely to be suitable and those for whom they may not be suitable.

The Government proposed a new system of Personal Accounts be introduced from 2012. Auto-enrolment into private pension provision has potential advantages and should lead to an increase in the number of people saving for retirement.

Personal Accounts could give many people access to a low-cost pension savings product with an employer contribution for the first time. As a result of the low charges and employer contribution, incomes from saving in Personal Accounts are likely to be higher than incomes from saving in Stakeholder Pensions for many people.

Inevitably, auto-enrolment raises questions about the suitability of Personal Accounts for the employees who are auto-enrolled.

In the paper, Personal Accounts are defined as being 'suitable' if individuals do not lose out as a result of their saving. This is a less stringent definition than ensuring that saving in Personal Accounts is the right thing for all consumers, which would be more consistent with the FSA's definition of 'suitability'.

In this paper, individuals are categorized by being at low risk, medium risk or high risk of Personal Accounts being unsuitable for them, depending on the effective level of return that they are likely to receive.

No single definition of 'suitability' is likely to be appropriate for the circumstances of every individual. For some people, it may be rational to save even if they have a low return on their saving, for example, if they have a strong preference to smooth consumption over their lifetime. On the other hand, some people may require a high return, for example if they are very riskaverse or have high levels of debt.

People at low risk of Personal Accounts being unsuitable for them are likely to receive back the value of their individual contributions to Personal Accounts, together with a full investment return on their contributions. Examples are:
- Single people in their twenties in 2012 with full working histories.
- Single men in their forties and fifties in 2012 who have a full working history and large additional savings.

People at medium risk of Personal Accounts being unsuitable for them would receive back the value of their individual contributions, protected for inflation, and some investment returns on their contributions, although they may not receive full credit for the investment returns. This group includes:

- Single people in their twenties in 2012 with low earnings and broken working histories, whether because of caring breaks or unemployment.
- Single people in their forties and fifties in 2012 with low earnings and full working histories.
- Single people in their twenties in 2012 who stay opted in to Personal Accounts while employed, and then become self-employed at a later date.

People at high risk of Personal Accounts being unsuitable for them are likely to receive back less than the value of their contributions into Personal Accounts. This group includes:
- Single people who are likely to rent in retirement and have no additional savings.
- Although they would not be auto-enrolled, single people in their forties and fifties in 2012 on low to median incomes who are self-employed.

Other factors can affect whether or not Personal Accounts are suitable:
- Returns from saving in Personal Accounts could be higher for people who are married at some point in retirement, rather than always single as the above examples assume. The majority of pensioners are married at some point in their retirement, so this could improve suitability for many people.
- It may still be advisable for some people in the high-risk category to save. For example, they could have a strong preference to smooth consumption over their lifetime.

Conversely, it may not be advisable for people in the low-risk category to save, for example if they have high levels of debt. Levels of both secured and unsecured debt appear historically high and a sizeable minority of people carry over credit card balances from month to month.
- Whether contributions are affordable will depend on individual preferences on current expenditure and saving.

If Personal Accounts are not suitable for everybody, then this does not necessarily mean that individuals should not be auto-enrolled. But it does have important implications for what information is needed to help people make informed decisions about whether they should opt out.

Some of the factors that affect the suitability of Personal Accounts could be more problematic than others to incorporate into a system of generic information. Clearly, no-one can predict with certainty all of their future life circumstances when making a savings decision. Some factors may be relatively straightforward to reflect in a system of generic information, such as current age, earnings and level of debt. Others may be more difficult, such as the affordability of contributions and likely future housing or marital status.

However, these findings do suggest that people will need very clear information to help them make informed decisions about whether they should stay in or opt out of Personal Accounts.

Two further factors for the Government to consider are:
- The design of the information provided for Personal Accounts may need to change over time, to reflect the gradual transition to the proposed pensions system, which could affect today's younger and older workers differently.
- Trivial commutation may improve returns from saving in Personal Accounts. How the trivial commutation limit is uprated in future could make a large difference to some people.

Bron: [link naar het document bij PPI]

5.5. Controledienst brengt gids uit voor grensoverschrijdende activiteiten binnen de EU

The Pensions Regulator has issued guidance about the application process for authorization and approval for trustees to accept contributions in respect of European members.

"The determining factors are the main administration of the scheme and the place of work of the member," it said. "If the scheme's main administration is in the UK and has members in another EU member state, it could still require authorisation and approval, even if the employer were in a third, non-EU country.

"If the scheme's main administration was in a non-EU country, it would not require authorisation and approval, even if it had members in both the UK and another EU member state (it would be a foreign scheme)." It said that pension schemes located in one EU member state must apply for authorisation and approval to accept contributions from employers employing members who are subject to the social and labour law of another EU member state.

Trustees need to decide whether they have to apply to the regulator for authorisation and approval for your scheme to accept contributions in respect of European members.

"If you are an employer sponsoring an occupational pension scheme, you need to consider whether your scheme will be accepting contributions in respect of European members in future," the regulator said.

"If you are an adviser to the trustees of a pension scheme, you need to know whether the scheme you are giving advice in respect of should be authorised and approved to accept contributions in respect of European members." It has issued a flowchart to help people decide if their scheme needs to apply for authorisation and approval.

Author: Daniel Brooksbank
www.IPE.com - 7 December 2006

5.6. Verplichte pensioenleeftijd op 65 doorverwezen naar het Europees Hof van Justitie

The right of employers to force workers to retire at 65 will be considered at the European Court of Justice after a judicial review of the measure, which forms part of the government's age discrimination laws.

The High Court decided to refer the case after the National Council on Ageing argued the regulation contravened a European Directive outlawing age discrimination. Under legislation which came into force in October, workers have the right to work up until the age of 65 and cannot be made to retire before then.

But these protections cease once workers reach 65. Employers can force workers over 65 to retire -- even though they have the right to ask to work longer -- and can also refuse to employ anyone over 65.

"Forcing people to retire is denying people the right to work -- a right which everyone should have, regardless of age," said Neil Churchill of Heyday. The group's lawyers argued that up to 25,000 people a year faced retirement against their wishes.

Employment Minister Jim Fitzpatrick has said the government will review the retirement age in 2011. "If the accumulated evidence then shows that we don't need the default age, we will do away with it and the associated provision allowing employers to decline to recruit someone near or over 65," he told an employers' conference earlier this year.

The matter will now be considered by the European court for clarification on legal points before it returns to the High Court for a ruling.

Bron : © Reuters 2006 ;Thu Dec 7, 2006

5.7. Consultant berekent het einde van streefdoelregelingen tegen 2012.

Final salary pensions seen dying out by 2012. The schemes will die out completely by 2012 in favour of less generous defined contribution plans, according to professional services firm Towers Perrin.

Based on current contribution rates to defined contribution schemes, workers will receive an average 6.9 percent of salary from their employer. That compares with far higher typical contributions into final salary schemes of between 15 and 20 percent of pay. Mark Duke, principal at Towers Perrin, told Reuters: "Defined contribution rates are worth much less than typical final salary ones; it's a big chunk of value that will go.

"The cost of providing pensions has risen greatly -- it's getting more and more expensive and employers are going to start saying: 'enough is enough'. Many businesses have already closed final salary schemes to new workers, as the "perfect storm" of improving lifespans, lower bond yields and investment returns, and new accounting standards have seen the cost of providing pensions soar.

Few firms have so far shut down schemes to existing workers. But Duke said: "We're beginning to see it happen -- Rentokil is one example. "All we need is another few high profile examples and it will give other companies the confidence to do the same.

The study shows a marked shift from generous final salary schemes to defined contribution, group personal pension and stakeholder plans, all of which are far cheaper to provide.

Tue Jan 9, 2007

6. Europese Commissie verwijst Zweden naar het Europees Hof van Justitie over fiscale discriminatie

The European Commission has decided to refer Sweden to the European Court of Justice for its discriminatory tax legislation on pensions. Domestic schemes in Sweden pay no tax on contributions but on retirement income. Occupational pension insurance taken with insurers based elsewhere in the EU and European Economic Area gets taxed as salary in the hands of the employee. Although pension payments are then exempt, the Commission believes that the difference is unfair. Savings with foreign providers will accrue at a far lower rate.

"The legislation clearly restricts the possibilities for insurers established elsewhere… to sell insurance policies in Sweden and dissuades employers from subscribing to foreign insurance policies," noted the Commission in an official statement. It added that tax rates on workers tend to be higher than those in retirement, compounding the disparity.

This is the third time that Sweden has incurred the wrath of the European authorities for impeding market freedoms in pension provision. The Safir case and the Skandia case previously found that the Nordic State discriminated against the purchase of life insurance abroad and the fiscal advantages of contributions to occupational pension insurance contracts.

Author: Brendan Maton
Bron: www.IPE.com - 9 January

7. Noorwegen : Pensioenhervorming doorgelicht

A reform of the fairly generous Norwegian public pension system was agreed upon by a broadly based coalition in the Norwegian Parliament in May 2005. The reform promises to reduce future costs and to improve labour incentives to work. The publicly provided pensions in Norway are of a PAYGO nature, with an exception for the supplementary pensions of the employees of the municipal sector.

Norway is in an enviable economic situation. Even before the oil incomes started to accrue the financial position of the Norwegian public sector was good. Presently the oil-wealth is being converted to financial wealth on the public hands at a high pace. Current projections are that the fund accumulated from petroleum revenues shall exceed one year's gross domestic product in 2007. As en element of the pension reform this fund has been renamed to "The Government Pension Fund – Global". There also exists a "Government Pension Fund – Norway". These two funds are government property, and they have no specific task or obligation in providing the pensions.

A research paper outlines the main elements of the pension system in Norway and the reform, and illustrates a possible route for further reform. The extraordinary fiscal position of Norway can be used to create the initial fund in a (at least partially) funded pension system. Such a reform will reduce tax wedges and increase economic efficiency. Some implications for the Norwegian capital market and government budget are discussed.

Bron:http://www.norges-bank.no/publikasjoner/

8. ZWITSERLAND: NEW EU-SWISS PENSION RULES AGREED

Swiss pension funds will cease paying out accrued benefits for workers who leave Switzerland for the EU as from June 2007, according to industry association ASIP.

Instead, ASIP said that only departing workers – whether Swiss or EU citizens – who retire will have access to their accrued benefits. For workers who remain salaried employees in the EU after leaving Switzerland, the accrued savings will remain with the funds, Pensionskassen, until they retire.

"These new rules are simply a result of recent agreements between Switzerland and the EU. The EU now recognises that second-pillar pensions in Switzerland should be treated like first-pillar pensions, as they are both obligatory. Hence, benefits from both pensions may not be drawn until retirement," ASIP from Zurich.

The new rules also apply to those workers who leave Switzerland for the EFTA countries Norway and Iceland. But they do not apply to those who go to Liechtenstein.

One key exception to the rules is that departing workers may, under certain conditions, access their accrued savings to finance the purchase of a residence.

The Swiss national union Unia said the new rules could lead to a sudden exodus of foreign workers with negative consequences for the Swiss economy. "We know of many migrant workers who are thinking of quitting before the new rules take effect," said Rita Schiavia, one of Unia's managing directors.

Author: Jan Wagner
Bron: www.IPE.com - 7 December 2006

9. PENSIOENHERVORMING IN PORTUGAL

Een greep uit de wijzigingen: een verhoging van de pensioenleeftijd, een aanpassing naar welvaartsvaste pensioenen en een moeilijker vervroegd pensioen.

Suite aux réformes des retraites, la pension de base sera indexée sur la performance économique et l'espérance de vie. Ces dernières ont augmenté l'âge de départ à la retraite en raison de l'allongement de la durée de vie.

Les travailleurs pourront liquider leur pension à 65 ans mais ils devront accepter une réduction de leur montant s'ils ne cotisent pas au-delà de cet âge. Après 5 mois de négociations, le parti socialiste ainsi que les syndicats ont abouti à un accord afin de modifier les règles de calcul de la pension jugées trop généreuses (80 % du dernier salaire).

La moyenne des salaires perçus pendant la vie active sera prise en compte à compter de l'année 2007. Le gouvernement a d'ores et déjà annoncé la nécessité d'opérer des réformes complémentaires afin d'adapter le régime de pensions au vieillissement de la population.

Actuellement les pensions sont évaluées en fonction de l'inflation. Une nouvelle mesure restreint les réévaluations es pensions qui excèdent 4500 euros par mois. De même, il sera plus difficile de liquider ses droits à pension de manière anticipée. De nouvelles propositions seront débattues par le Parlement le mois prochain.

Bron: Page 6 CSE-développement@News Numéro 58; http://www.cse-d.eu/csesite/accueil.nsf/

10. ROEMENIË LANCEERT MOGELIJKHEID VOOR VERPLICHTE TWEEDE PIJLER

Het Roemeens Parlement heeft een wet goedgekeurd die een verplichte tweede pijler op het model van de wereldbank mogelijk maakt. De concrete invulling van de wet, zal nog een tijdje op zich laten wachten. Er zijn nog geen uitvoeringsbesluiten in de maak die een concrete invulling moeten geven aan elementen zoals de bijdragebetaling of de opbouw van de verworven prestaties.

Bron: www.gov.ro/engleza/- 4 January 2007

11. CANADA: EINDE VAN DE VERPLICHTE PENSIOENLEEFTIJD OP 65

Beginning December 12, Ontario employers will no longer be able to mandate that all workers retire at age 65. The Ending Mandatory Retirement Statute Law Amendment Act, 2005, which passed Ontario's legislative assembly a year ago by a wide margin, amended the Ontario Human Rights Code (OHRC) and abolished the employer option of mandating retirement at age 65 for workers. The new law now applies age discrimination protection to workers aged 65 or older.
The law provides for a 1-year transition period to enable employers to:

- Familiarize themselves with the act and its possible effects on the workplace;
- Consider necessary changes to existing workplace retirement policies; and
- Discuss with their unions required changes to collective bargaining agreements.

The "bona fide occupational requirement" of the OHRC allows mandatory retirement for labor categories that require certain physical abilities. Employers will not be required to reinstate workers who turned age 65 before the law is implemented or who retire during the transition period. Similar laws repealing mandatory retirement have been adopted in the provinces of Manitoba and Québec and have been proposed in Saskatchewan.

Nationwide, Canadians with at least 10 years of residency after the age of 18 are eligible for a universal pension. Withdrawal from the workforce is not necessary to access this pension benefit. Two earnings-related retirement pensions are also available: the Canada Pension Plan and the Québec Pension Plan for residents of that province. Early pensions at a reduced amount may be taken at age 60 if employment is fully or substantially ceased.

Sources: HRM Guide, June 2005; "FAQ: Mandatory Retirement," CTV.ca, November 7, 2006.

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www.law.kuleuven.be/leergangpensioenrecht

Deze niet periodieke nieuwsbrief is verbonden aan de leergang pensioenrecht en wordt in functie van recente ontwikkelingen opgesteld. Het doel is de studenten te informeren over de allerlaatste ontwikkelingen in het pensioenrecht in zijn meest ruime benadering. De nieuwsbrief is verwijzend en moet de studenten op pad zetten naar nieuwe bronnen. De leergang maakt deel uit van het postacademisch onderwijs van de K.U. Leuven. Doel is inzicht te bieden in de systematiek, de achtergronden en de concrete toepassing van het pensioenrecht. Hiervoor is het nodig dat de actuele academische kennis in combinatie met de praktijkkennis van het pensioenrecht op een hoog niveau wordt overdragen. De nieuwsbrief is daarin slechts één medium.
De redactie berust integraal bij Yves Stevens. Zowel studenten als docenten in de leergang pensioenrecht zijn vrij om suggesties te geven naar de inhoud. Reacties zijn welkom yves.stevens@law.kuleuven.be of leergangpensioenrecht@law.kuleuven.be.